

REMARKS

In reply to the Final Office Action of August 6, 2010, applicant proposes to amend claims 39 and 46. No new claims would be added. Applicant also proposes to cancel without prejudice claims 1-33, which were previously withdrawn. Claims 34-48 would be pending, with claims 34 and 42 in independent form. Applicants submit that the proposed amendments would add no new matter. In addition, all amendments set forth above would raise no new issues that would require further consideration and/or search. Applicants submit that these amendments would place the claims into condition for allowance, or at least present the rejected claims in better form for consideration on appeal, and should therefore be entered after the final rejection under 37 C.F.R. § 1.116 (a).

Applicants acknowledge the Examiner's indication that claims 34-38, 41-45, and 47-48 are allowed.

Examiner Interview Summary

Applicant thanks Examiner Jaworski for discussing this application with applicant's representative Peter Poulin on November 5, 2010. During the interview, the status of the claims was discussed and agreement was reached that the claims would be in condition for allowance pending resolution of the issues under 35 U.S.C. § 112. The Examiner indicated that no further search issues would be raised by amending the claims to address the rejections under 35 U.S.C. § 112.

35 U.S.C. § 112, Second Paragraph

Claims 39, 40, and 46 stand rejected under Section 112, second paragraph, as allegedly being indefinite. According to the Office, in each of claims 39 and 46, it is unclear how illuminating the sample with plural wavelengths relates to the selected wavelengths recited in claims 34 and 42 (Action page 2). Claim 40 is said to inherit this defect from claim 39 (Action at page 2).

In this Response, applicant has amended claim 39 to cover a method that includes, prior to selecting the two wavelengths of light, illuminating the sample with a plurality of wavelengths of light and detecting light transmitted through the sample, where “the two wavelengths of light are selected from among wavelengths of the light transmitted through the sample.” Support for this amendment is found in the published version of applicant’s specification (U.S. Patent Application Publication No. US 2006/0106293, “Specification”) at, for example, paragraphs 0061-0070.

Applicant has also amended claim 46 to cover a method that includes, prior to obtaining the intensities of the transmitted light for two wavelengths, illuminating the sample with a plurality of wavelengths of light and detecting light transmitted through the sample, where “the two wavelengths of light are selected from among wavelengths of the light transmitted through the sample.” Support for this amendment is found in the Specification at, for example, paragraphs 0061-0070.

Applicant believes that these amendments to claims 39 and 46 clarify the relationships of the additional steps recited in these claims to the steps recited in independent claims 34 and 42, respectively, thereby curing any alleged indefiniteness issues. Accordingly, applicant respectfully requests reconsideration and withdrawal of the rejections of claims 39, 40, and 46 under 35 U.S.C. § 112, second paragraph.

CONCLUSION

Applicant submits that all pending claims are now in condition for allowance and respectfully requests a notice of allowance. It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue, or comment does not signify agreement with or concession of that rejection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper.

A petition of extension of one month is submitted herewith, along with the required fees of \$65 for the Petition for Extension of Time fee paid via the Electronic Filing System (EFS) by

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way of Deposit Account authorization. Please apply any other charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 10851-0008US1.

Respectfully submitted,

Date: 12 - 6 - 2014


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